

AS

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

MARCH 10, 1997

DOCKET NO. 96-358-C - ORDER NO. 97-189

JD

IN RE: PETITION OF AT&T COMMUNICATIONS)	
OF THE SOUTHERN STATES, INC. FOR)	ORDER
ARBITRATION OF AN INTERCONNECTION)	ON
AGREEMENT WITH BELL SOUTH TELE-)	ARBITRATION
COMMUNICATIONS, INC.)	

This matter comes before the Public Service Commission of South Carolina (the "Commission") on the Petition ("Petition") of AT&T Communications of the Southern States, Inc. ("AT&T") for arbitration of an interconnection agreement with BellSouth Telecommunications, Inc. ("BellSouth") (AT&T and BellSouth are herein collectively known as the "Parties"). The Petition was filed pursuant to the Telecommunications Act of 1996 (the "Act") (47 U.S.C.A. §252 et seq.). AT&T filed its Petition on or about November 15, 1996, pursuant to §252 of the Act. BellSouth and AT&T had begun negotiations on June 10, 1996. Upon the filing of the Petition, the Commission established a procedure for the arbitration (See Commission Order No. 97-40) and properly noticed the docket and the pending hearing. The Consumer Advocate for the State of South Carolina (the "Consumer Advocate"), the South Carolina Cable Television Association ("SCCTA"), and BellSouth Advertising and Publishing Company

("BAPCO") were allowed to participate in the arbitration (these parties were not Parties of Record or Intervenors; see Commission Order Nos. 97-48 and 97-69). The Parties in this matter filed testimony and a list of outstanding issues to be arbitrated by the Commission.

An arbitration hearing was held on this matter February 3 - 5, 1997, in the Commission's hearing room. The Honorable Guy Butler, Chairman, presided. Catherine D. Taylor, Staff Counsel, assisted in the examination during the hearing. Francis P. Mood, Esquire, Kenneth P. McNeely, Esquire, and Steve A. Matthews, Esquire, represented AT&T. Harry M. Lightsey, III, Esquire, William F. Austin, Esquire, William Ellenberg, Esquire, and Edward Rankin, Esquire, appeared on behalf of BellSouth. Elliott F. Elam, Jr., Esquire, represented the Consumer Advocate; B. Craig Collins, Esquire, represented SCCTA; and Palmer Freeman, Jr., Esquire, represented BAPCO. The three hearing participants, pursuant to Commission Order, were not allowed to present testimony or witnesses in the proceeding.

AT&T Communications presented the following witnesses:

- (1) Joseph Gillan
- (2) Dr. David L. Kaserman
- (3) Richard Guepe
- (4) Art Lerma
- (5) John M. Hamman
- (6) Wayne Ellison
- (7) Don J. Wood
- (8) William J. Carroll
- (9) Deborah J. Winegard

BellSouth presented the following witnesses:

- (1) Alphonso J. Varner
- (2) Robert C. Scheye
- (3) Dr. Steve G. Parsons
- (4) Walter S. Reid
- (5) W. Keith Milner
- (6) D. Daonne Caldwell
- (7) Gloria Calhoun

At the beginning of the arbitration, Counsel for BellSouth informed the Commission that the issues for which Ms. Calhoun submitted testimony had been settled by the Parties, and, therefore, Ms. Calhoun did not offer her testimony for the record.

Section 252 of the Act provides for voluntary negotiations between requesting carriers and incumbent local exchange carriers. If parties are unable to reach agreement on the terms of an appropriate interconnection agreement, then either party may request arbitration by the State Commission. Pursuant to §262(b)(4) of the Act, this Commission is to resolve each issue set forth before it.

BellSouth and AT&T provided to the Commission a listing of the outstanding issues for arbitration by the Commission. Accordingly, the Commission has ruled upon each of these issues in the identical order of the listing. The outstanding issues and the Commission's decision upon each are set forth below.

(1) Must BellSouth offer for resale to AT&T at wholesale rates all of BellSouth's retail telecommunications services? What services provided by BellSouth, if any, should be

excluded from resale?

The services in dispute on this issue are: promotions, non-recurring services, contract service arrangements ("CSAs"), Lifeline/Linkup, and 911/E911/N11. The Parties have reached an agreement upon the issue of reselling grandfathered services. AT&T argues that requiring BellSouth to make all services defined by the Act available for resale will benefit South Carolina consumers. Such action by the Commission would provide South Carolina consumers the ability to select the carrier of their choice without loss of any services to which they presently subscribe.

The Commission adopts AT&T's position on this issue with one exception. The Commission holds that the Act requires BellSouth to offer for resale to AT&T at wholesale rates all telecommunications services that BellSouth provides at retail to non-carrier subscribers. However, contract service arrangements ("special assemblies") should not receive a further discount below the contract service arrangement rate. AT&T should receive the same rate as the CSA customer. AT&T will still be allowed to package the service with other services in order to compete with BellSouth or other local entrants.

Resale of these services will insure that all BellSouth customers will have choices for all services presently received from BellSouth. The Act indeed permits reasonable and non-discriminatory conditions or limitations on the resale of telecommunications services, and we therefore

condition our ruling with respect to the CSAs. CSAs are designed to respond to specific competitive challenges on customer-by-customer basis. As BellSouth argued, the contract price for these services has already been discounted from the tariffed rate in order to meet competition.

(2) What terms and conditions, including use and user restrictions, if any, should be applied to resale of BellSouth services?

Until further order of this Commission, we hold that the present tariff restrictions for BellSouth services shall remain in place since there has been no showing that the restrictions set forth in BellSouth's tariffs are unreasonable and/or discriminatory. The Commission allows BellSouth to apply any use or user restriction or term or condition found in the relevant tariff of the service being resold when it resells that service to wholesale customers. Resale of BellSouth's retail services shall be subject to the terms and conditions currently contained in the resale service tariffs. Upon Petition to this Commission, AT&T may challenge any terms and conditions which it contends are unreasonable or discriminatory. No new restrictions have been proposed for or will be implemented upon the resold services. Cross class selling is specifically prohibited. The Commission also adopts the interLATA joint marketing restriction found in the Act (§271(e)(1)).

(3) What are the appropriate standards, if any, for performance metrics, service restoration, and quality

assurance related to services provided by BellSouth for resale and for network elements provided to AT&T by BellSouth?

This Commission finds that it is not necessary to establish additional performance and service measurements. This Commission already has service measurements in place. BellSouth must provide the same quality of services to AT&T that it provides to its own customers, as it has committed to do. AT&T has a right to submit complaints to the Commission should it feel that any service is not comparable. We believe that this decision comports with the Act and the FCC's Order. Within ninety (90) days of the approval of the agreement, BellSouth and AT&T must meet to develop additional measurements, if needed.

(4) Must BellSouth take financial responsibility for its own actions in causing, or its lack of action in preventing, unbillable or uncollectible AT&T revenues?

The Commission adopts AT&T's position on this issue. BellSouth is the only Party in the position to prevent the errors that lead to unbillable or uncollectible revenue. Thus, consistent with the Act, BellSouth should compensate AT&T for revenue losses caused by BellSouth's errors. A new entrant's inability to receive all appropriate revenues would substantially impair the competitive market. This Commission lacks the jurisdiction or legislatively-granted authority to impose penalties or fines under this issue.

(5) Should BellSouth be required to provide real-time and

interactive access via electronic interfaces as requested by AT&T to perform the following: pre-service ordering, service trouble reporting, service order processing and provisioning, customer usage data transfer, and local account maintenance? If this process requires the development of additional capabilities, and costs are incurred, how should those costs be recovered? (The Parties announced at the hearing that, with the exception of the cost recovery issue, BellSouth and AT&T have resolved this issue.)

AT&T offers in its Brief that the costs associated with implementing electronic interfaces should be shared equitably among all parties who benefit from those interfaces. AT&T's position on this issue is adopted upon the following condition: The Party requesting the special arrangement for data access should pay for the developmental cost for providing the access. However, if other Parties request the same or similar access and benefit from the development, these other parties should share the cost, and AT&T would then be refunded a proportionate share of the costs. We conclude that the system and design modifications necessary to provide new entrants the service and capabilities such as those requested by AT&T in this proceeding are reasonably necessary to establish the infrastructure necessary to accomplish the goals of the Act and will ultimately benefit many competing Local Exchange Carriers.

(6) When AT&T resells BellSouth's local exchange service, or purchases unbundled local switching, is it technically

feasible or otherwise appropriate to route operator services and directory assistance calls directly to AT&T's platform?

AT&T requests customized routing of operator and directory assistance calls to provide South Carolina consumers with convenient access to their chosen local service provider in order to avoid customer confusion. The Commission adopts AT&T's position on this issue. BellSouth shall route AT&T customers to AT&T for operator and directory assistance services. Therefore, a customer will be able to have his or her calls routed to the operators of such customer's chosen local service provider. Line class codes shall be utilized as recommended by AT&T on a first come, first serve basis. BellSouth and AT&T are encouraged to continue their efforts to develop a long-term Advanced Intelligent Network ("AIN") based solution to the selective routing issue.

(7) Must an incumbent local exchange carrier brand services sold or information provided to customers on behalf of AT&T? (The only remaining aspect of this issue is the branding of operator services and directory assistance).

This Commission finds that branding is technically feasible and should be implemented. Branding of services is important to consumers because it eliminates customer confusion. We order BellSouth to brand any operator and directory assistance services with the AT&T brand where BellSouth cannot route calls because of technical limitations or AT&T chooses not to require direct routing to its own operator and directory assistance platform. However, if

BellSouth finds that it is not possible to implement branding for AT&T, BellSouth must revert to generic branding for all local exchange providers including itself.

(8) (Original issue number 9) Must BellSouth allow AT&T to appear on the cover of BellSouth's directory in a manner at least equal to BellSouth's appearance?

This issue is not subject to arbitration. BAPCO is not jurisdictionally subject to arbitration under the Act. Directory publishing is a private matter which should be negotiated between AT&T and BAPCO or another publisher. BellSouth has no ability to control or direct the placement of names or logos on directory covers. Therefore, AT&T's request is denied.

(9) (Original issue number 14) Must BellSouth provide AT&T with: (a) unmediated access to AIN triggers, or utilize the same mediation device that it requires AT&T to use?

This Commission concludes that AT&T's position on this issue shall be adopted. This Commission seeks to encourage the development of an intelligent network in South Carolina for the benefit of South Carolina consumers. The Commission therefore orders BellSouth to unbundle access to its AIN triggers for AT&T in the same manner in which BellSouth uses AIN triggers for services to its own customers. In reaching this result, we find that there is no need for a mediation device. The use of a mediation device may cause AT&T customers to experience an increase in post-dial delay.

(b) routing capabilities to AT&T's operator

services platform? Operator assistance meets the definition of a "network element" because these services are "capabilities" used in the transmission, routing or other provision of a telecommunications system. AT&T's request to purchase branded operator services and to have AT&T customers routed to AT&T operators is valid and reasonable. We believe such routing of operator services will enhance competition in South Carolina.

(c) access to customers' inside wiring by allowing AT&T to disconnect and ground BellSouth's network interface device ("NID")? BellSouth has agreed to permit AT&T to attach its wire to BellSouth's NIDs with excess capacity. AT&T witnesses testified that, when attaching to NIDs without excess capacity, AT&T believes it could disconnect and properly ground the BellSouth wire. It is within this Commission's discretion, under the FCC's Order, as to whether a direct connection between the new entrant's local loop and the incumbent LECs' NID is technically feasible. We believe that this is technically feasible. We therefore order that AT&T may disconnect and ground BellSouth's wire and attach AT&T's wire directly to BellSouth's NID. Further, we hold that AT&T should be permitted to attach its wire to NIDs used in business settings which are similar to residential service NIDs. However, AT&T must assume full liability for its actions and for any adverse consequences that may result.

(10) (Original issue number 15) Should AT&T be allowed

to combine unbundled network elements in any manner it chooses, including recreating existing BellSouth services? If AT&T is allowed to combine unbundled elements, what is the appropriate pricing for recombined elements?

AT&T may recombine unbundled network elements in any manner it chooses. However, the rebundling of network elements to produce an existing retail service is a pricing issue and is under the jurisdiction of this Commission. If network elements are rebundled to produce an existing tariffed retail service, the appropriate price to be charged to AT&T by BellSouth is the wholesale price (discounted retail price). AT&T should be required to pay to BellSouth the applicable wholesale rate of the replicated service and not just the rates for the unbundled network elements that are purchased.

Finally, the Commission concludes that vertical features inherent in the unbundled local switching element are themselves retail services and, thus, should be priced at the retail tariffed rate less the appropriate discount and not priced as part of the switching component.

(11) (Original issue number 16) Must BellSouth make rights-of-way available to AT&T on terms and conditions equal to that it provides itself for the following situations:

- (a) What is the appropriate means to provide AT&T the access to ducts where an emergency situation occurs?
- b) Whether BellSouth should allow AT&T to leave a reasonable amount of equipment in place for 48 hours while it places its

facilities in BellSouth's right-of-way, provided space is available? (c) Whether BellSouth should be required to provide AT&T copies of environmental reports, if any, on rights-of-way AT&T will be accessing?

The Commission adopts AT&T's position on this issue. BellSouth shall provide to AT&T equal and non-discriminatory access to rights-of-way, conduits, poles, pole attachments and other pathways. Non-discriminatory access is required to promote competition. AT&T has proposed a common emergency duct and inner-duct for use in emergency service restoration situations. AT&T also has proposed a priority restoration schedule in an emergency situation to restore service first to fire, police, and/or hospital facilities and next to restore service to the facilities impacting the greatest number of people. AT&T seeks space in manholes for racking and storage of up to fifty feet of cable and space for a reasonable amount of equipment necessary for installing and/or splicing fiber for a period not to exceed 48 hours, where space is available. Additionally, AT&T requests that BellSouth advise it as to whether an environmental, health and safety inspection has been performed within ten days of AT&T's application for a license. The Commission believes that AT&T's requests are reasonable and result in non-discriminatory access as intended by the Act. Therefore, the Commission orders BellSouth to provide AT&T access to rights-of-way, conduits, pole attachments, and any other pathways on terms and conditions as requested by AT&T (as

described above).

(12) (Original issue number 19) Must BellSouth provide AT&T with access to BellSouth's dark fiber?

The Commission defines dark fiber in this proceeding as "unused transmission media". We conclude that dark fiber is a network element because it is a facility or equipment used in the provision of a telecommunications service. Provision of unused transmission media will facilitate the development of competition. Denial of access to such unused facilities to AT&T and other new entrants may delay their entry into the market to provide competitive services to South Carolina consumers. The Commission therefore adopts AT&T's position on this issue and orders BellSouth to provide AT&T with access to BellSouth dark fiber. Parties may file complaints of alleged abuse of the purchase of dark fiber with the Commission.

(13) (Original issue number 21) Must appropriate wholesale rates for BellSouth services subject to resale equal BellSouth's retail rates less all direct and indirect costs related to retail functions? (See Below)

(14) (Original issue number 22) What are the appropriate BellSouth wholesale rates?

The Commission considers together these two issues regarding BellSouth wholesale rates. We adopt BellSouth witness Walter Reid's methodology with some exceptions. We do not agree that all of the operator services (such as call completion and number services) costs would continue to be experienced. The Commission believes that 30% of the costs would be avoided due to the direct routing of calls to AT&T

that has been mandated by the Commission in this Order. The Commission also believes that BellSouth's calculations of avoided costs for Account 6611, product management, does not take into consideration costs of market management, market research, and supervision and support expenses for these job class functions. The Commission assigns the percent avoided in this category as 25% instead of BellSouth's 11.8%.

Similarly, the Commission disagrees with BellSouth's determinations of the percentage of avoided cost in Account 6612 and assigns 90% to that category. The Commission also assigns 65% to the customer service category Account 6623. We therefore arrive at an overall discount of 14.8% upon making these noted changes to Witness Reid's calculations. Generally, we agree with BellSouth's study and its calculation that relies on the Act's "avoided" cost standard and which calculates the wholesale discount based on the fact that BellSouth will continue to operate in a wholesale and retail environment.

(15) (Original issue number 23) What is the appropriate price, including non-recurring charges, for each unbundled element AT&T has requested?

We hold on this issue that the negotiated prices agreed upon by BellSouth and American Communications Systems, Inc. ("ACSI"), in Docket No. 96-262-C, shall be utilized as the interim prices for unbundled network elements. The ACSI agreement is the only Commission-approved interconnection agreement which contains unbundled network element

costs/pricing. BellSouth shall furnish verifiable cost studies in support of the prices for unbundled network elements within 90 days of the date of this Order. The differences between the interim rates and the prices developed pursuant to the cost studies will be trued-up for the Parties.

(16) (Original issue number 24) What is the appropriate price for call transport and termination?

We hold that the FCC proxy rate shall be used as an interim rate. Verifiable cost studies shall be provided to the Commission within 90 days after the date of this Order, and settlement shall be trued-up to reflect cost study prices.

(17) (Original issue number 26) What is the appropriate price for certain support elements relating to interconnection and network elements?

Again, the rates established in the negotiated agreement between BellSouth and ACSI in Docket No. 96-262-C shall serve as the interim rates in the present matter. Verifiable cost studies shall be provided within 90 days of the date of this Order and settlements shall be trued-up to reflect the cost study prices.

(18) (Original issue number 27) Do the provisions of Sections 251 and 252 apply to the price of exchange access? If so, what is the appropriate price for exchange access?

The Commission finds that Sections 251 and 252 of the Act do not apply to the price of exchange access and are

therefore outside the scope of the Act. A telecommunications carrier seeking interconnection only for interexchange services does not fall within the scope of the Act.

Therefore, our decision on this issue is deferred until the FCC's rulings on access charge reform and universal service are issued.

The pricing rules in Sections 251 and 252 regulate the prices of local interconnection and unbundled network elements used for local service only. Congress intended the pricing and other rules in sections 251 and 252 to open local telecommunications markets to competition. Those sections were clearly structured to create the framework for interconnection of local networks and access to network elements in order to create local competition. There is nothing in the Act that would suggest that these rules were intended to cause a drastic change in the current exchange access charge structure.

(19) (Original issue number 28) When AT&T resells BellSouth's telecommunications services, do AT&T's rates apply to collect, third-party, and intraLATA calls when such calls are originated from an AT&T customer, but billed to a BellSouth customer?

The originating local service provider's rates should apply to collect, third-party and calling card intraLATA calls. Calls to information service providers must be provided to AT&T in a rated format.

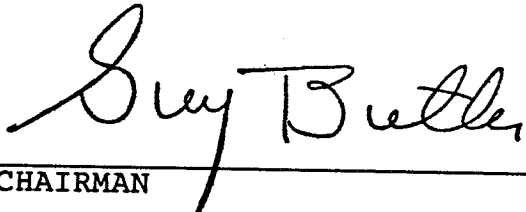
(20) (Original issue number 29) What are the appropriate

general contractual terms and conditions that should govern the interconnection agreement (e.g., resolution of disputes, performed requirements and liability/indemnity?) (The only remaining issues are application of the agreement to BellSouth's affiliates and BellSouth providing customer credit history it has on customers).

BellSouth affiliates which are not incumbent local exchange carriers should not be bound by this Order. This Commission cannot force contractual terms upon a BellSouth affiliate which is not bound by the Telecommunications Act.

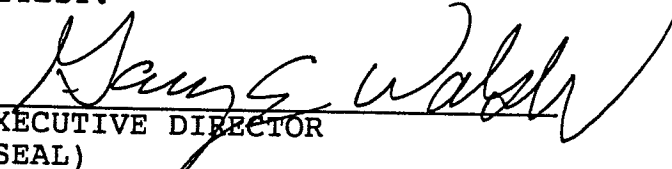
This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION.



CHAIRMAN

ATTEST:



Deputy EXECUTIVE DIRECTOR
(SEAL)

State of South Carolina



Public Service Commission

MEMORANDUM

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TO: ALL PARTIES OF RECORD AND PARTICIPANTS

FROM: CATHERINE D. TAYLOR, STAFF COUNSEL *Catherine D. Taylor*

DATE: MARCH 11, 1997

RE: ORDER NO. 97-189 - ORDER ON ARBITRATION
PETITION OF AT&T FOR ARBITRATION WITH BELLSOUTH
DOCKET NO. 96-358-C

I enclose herewith a "substitute" page 13 for the Order and would appreciate your replacing the original page 13 with the attached page 13. I inadvertently deleted a sentence in Paragraph No. 12 (original issue number 19) during the final printing of the Order. Therefore, I apologize for any inconvenience to you or your clients. Please call me at (803) 737-5114 if you have questions.

cc: ✓ Charles W. Ballentine, Executive Director
Gary E. Walsh, Deputy Executive Director
D. Wayne Burdett, Manager, Utilities Department
James M. McDaniel, Utilities Department
R. Glenn Rhyne, Manager, Research Department
All Staff Attorneys

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